

**NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.**
See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24.

FILED BY CLERK

OCT -9 2012

COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

| | | |
|---------------------------|---|----------------------------|
| IN RE THE BOND FORFEITURE |) | 2 CA-CV 2012-0007 |
| |) | DEPARTMENT B |
| |) | |
| OF \$25,000. |) | <u>MEMORANDUM DECISION</u> |
| |) | Not for Publication |
| |) | Rule 28, Rules of Civil |
| |) | Appellate Procedure |
| _____ |) | |

APPEAL FROM THE SUPERIOR COURT OF COCHISE COUNTY

Cause No. CR201100773

Honorable James L. Conlogue, Judge

AFFIRMED

T.S. Hartzell

Tucson
Attorney for Appellant

Edward G. Rheinheimer, Cochise County Attorney
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Bisbee
Attorneys for Appellee

V Á S Q U E Z, Presiding Judge.

¶1 Azteca Bail Bonds, LLC (Azteca) appeals from the superior court’s judgment forfeiting a \$25,000 appearance bond after the defendant, Cecilia Pereida, failed to appear for a court hearing. Azteca contends the court lacked jurisdiction to conduct bond forfeiture proceedings and violated its due process rights by failing to comply with the required procedures in Rule 7.6(c), Ariz. R. Crim. P. It also argues there was insufficient evidence to support the court’s judgment. For the reasons set forth below, we affirm.

Factual Background and Procedural History

¶2 We view the facts in the light most favorable to affirming the trial court’s decision. *State v. Old W. Bonding Co.*, 203 Ariz. 468, ¶ 9, 56 P.3d 42, 45 (App. 2002). Pereida was arrested and charged with various drug-related offenses after four bundles of marijuana were discovered by police officers during a search of her residence. The justice court conducting the initial appearance set an appearance bond of \$25,000 and imposed standard conditions of release, including the requirement that Pereida “[a]ppear to answer and submit . . . herself to all further orders and processes of the Court having jurisdiction.” The court ordered Pereida to attend a preliminary hearing on October 12, 2011, if in custody, or October 24, 2011, if out of custody, and an Early Resolution Court (ERC) hearing in the superior court on October 12, 2011. On October 3, 2011, Azteca posted the appearance bond on Pereida’s behalf.

¶3 On October 10, 2011, Pereida signed a waiver of time for preliminary hearing, acknowledging she was “required by law” to attend the ERC hearing, which had been rescheduled for October 19, 2011, in Division Five of the superior court. Pereida’s

attorney also signed the waiver, confirming he had explained to Pereida that her presence was required at the ERC hearing. She nevertheless failed to attend the ERC hearing on October 19.

¶4 On October 20, 2011, Pereida was indicted for various drug-related offenses,¹ and a grand jury warrant was issued for her arrest. That same day, the state filed with the justice court a “Notice of Supervening Indictment and Motion and Order Quashing Justice Court Warrant or Summons and Order Transferring File to Superior Court.” Based on the state’s motion, the justice court ordered the warrant quashed and the file and bond transferred to the superior court.

¶5 On October 28, 2011, the superior court permitted Pereida’s attorney to withdraw. On November 15, 2011, the state initiated bond forfeiture proceedings based on Pereida’s failure to appear at the ERC hearing on October 19. The court set a hearing for the parties to show cause why the bond should not be forfeited. Azteca appeared at the hearing on December 27, 2011, but Pereida did not. In granting the state’s request for forfeiture, the court issued the following findings:

The Court FINDS under Rule 7.6(c)[, Ariz. R. Crim. P.,] that jurisdiction was transferred to the Superior Court upon the filing of the Supervening Indictment. The Court further FINDS that [Pereida] signed a document which acknowledged her obligation to appear for proceedings on October 19, 2011 in Division Five of the Superior Court and that [Pereida] failed to appear after acknowledging her responsibility to appear. The Court further FINDS that there

¹Although the justice court complaint alleged only possession of marijuana for sale, the indictment alleged conspiracy to possess marijuana for sale, possession of marijuana for sale, and possession of drug paraphernalia. All of the charged offenses are felonies. *See* A.R.S. §§ 13-1003, 13-3405, 13-3415.

was no notice to the surety within ten (10) days after issuance of the warrant as required under Rule 7.6(c)(1).

But despite the lack of notice, the court concluded Azteca had not been prejudiced by the technical non-compliance with Rule 7.6(c). This appeal followed. We have jurisdiction pursuant to A.R.S. § 12-2101(A)(1).

Standard of Review

¶6 We review the trial court’s order forfeiting an appearance bond for an abuse of discretion, but review de novo its interpretation of the rules governing such bonds. *State v. Garcia Bail Bonds*, 201 Ariz. 203, ¶ 5, 33 P.3d 537, 539 (App. 2001). And “[w]e interpret rules of procedure, as we do statutes, by their plain meaning.” *Old W. Bonding Co.*, 203 Ariz. 468, ¶ 12, 56 P.3d at 45. We look first to the rule’s language because “the best and most reliable index of a [rule’s] meaning is its language and, when the language is clear and unequivocal, it is determinative of the [rule’s] construction.” *Deer Valley Unified Sch. Dist. No. 97 v. Houser*, 214 Ariz. 293, ¶ 8, 152 P.3d 490, 493 (2007), quoting *Janson ex rel. Janson v. Christensen*, 167 Ariz. 470, 471, 808 P.2d 1222, 1223 (1991).

Discussion

Jurisdiction

¶7 First, we address Azteca’s argument that the superior court lacked jurisdiction over the bond forfeiture proceedings. According to Azteca, the ERC hearing occurred while the justice court had jurisdiction of the criminal proceedings—before the case had been transferred to the superior court—and the justice court therefore was the

proper court to handle the forfeiture proceedings. However, the superior court concluded it had “jurisdiction to move forward with the forfeiture proceedings” because the case had been transferred to that court with the filing of the supervening indictment. We agree.

¶8 A justice court’s criminal jurisdiction over felony charges is limited to commencing an action, conducting preliminary proceedings, and holding defendants to answer to the superior court. A.R.S. § 22-301(A)(2). Such initial proceedings may include setting an appearance bond and imposing conditions of release. *See* A.R.S. § 22-314; *see also* Ariz. R. Crim. P. 7.2. But an appearance bond issued by the justice court “shall automatically be transferred to the same charge prosecuted by indictment, even though the felony complaint is dismissed,” Ariz. R. Crim. P. 7.6(a), and when a case is transferred to the superior court, the bond is transferred with it, Ariz. R. Crim. P. 7.6(b).

¶9 Here, Pereida initially was charged by complaint filed in the justice court and failed to appear at the ERC hearing in the superior court on October 19. A grand jury indicted her on October 20 and, that same day, the county attorney filed a notice of supervening indictment with the justice court. The justice court then ordered “the file together with any bond . . . transferred” to the superior court.² And even though the supervening indictment, which triggered the transfer of the case, was filed one day after Pereida failed to appear at the ERC hearing, the rules do not specify that the court with

²To the extent Azteca claims the justice court had “exonerated” the bond, we disagree. Although the justice court’s “case history” indicates the bond was “exonerated to [the] superior court,” we agree with the superior court that this was a clerical error because the bond actually was transferred pursuant to the justice court’s order.

jurisdiction at the time a violation occurs must preside over a subsequent bond forfeiture proceeding. *See* Ariz. R. Crim. P. 7.6(a), (b); *cf. Simon v. Maricopa Med. Ctr.*, 225 Ariz. 55, ¶ 28, 234 P.3d 623, 630 (App. 2010) (superior court has jurisdiction over all proceedings in which another court not vested with exclusive jurisdiction).

¶10 Moreover, bond “[f]orfeiture proceedings . . . are simply a streamlined substitute for a civil [law]suit resulting from a breach of contract.” *Garcia Bail Bonds*, 201 Ariz. 203, ¶ 14, 33 P.3d at 540; *see also State v. Copperstate Bail Bonds*, 222 Ariz. 193, ¶ 15, 213 P.3d 342, 344 (App. 2009). And, as the state points out, jurisdiction of the forfeiture proceedings in this case must lie with the superior court because the amount involved exceeded the jurisdictional limits of the justice court. *See* A.R.S. § 22-201(B) (justice court has jurisdiction in civil actions where amount involved is \$10,000 or less); *see also State ex rel. Ronan v. Superior Court*, 96 Ariz. 229, 231, 393 P.2d 919, 920 (1964). We therefore find no error in the superior court’s exercise of jurisdiction.

Compliance with Rule 7.6(c)

¶11 Azteca next contends the superior court violated its due process rights by failing to comply with the procedural requirements of Rule 7.6(c). Azteca concedes that it failed to raise its due process claim below. We therefore deem this argument waived on appeal. *See Hahn v. Pima County*, 200 Ariz. 167, ¶ 13, 24 P.3d 614, 619 (App. 2001); *Schoenfelder v. Ariz. Bank*, 165 Ariz. 79, 88, 796 P.2d 881, 890 (1990).

¶12 However, Azteca also argues the superior court’s judgment must be reversed because the court failed to follow the procedures in Rule 7.6(c) by not issuing a “bench warrant” and it failed to provide Azteca with timely notice of the only warrant

that had been issued. Azteca claims “[t]he warrant that was issued was done so at the behest of the grand jury” and was not a bench warrant issued by the court for a violation of a condition of release. Azteca also contends it did not learn of the grand jury warrant until the state filed the application for bond forfeiture.

¶13 Rule 7.6(c)(1) provides that when a defendant has violated a condition of an appearance bond, a bench warrant for the defendant’s arrest must be issued and the surety must be notified of the issuance of the warrant within ten days. The court also must set a hearing within a reasonable time—not more than 120 days—requiring the parties and the surety to show cause why the bond should not be forfeited. Ariz. R. Crim. P. 7.6(c)(1). “If at the hearing, the violation is not explained or excused,” the court may order all or part of the appearance bond forfeited. Ariz. R. Crim. P. 7.6(c)(2). One purpose for requiring “prompt and adequate notice to the surety” is to “enhance [the surety’s] chances of curing a release condition violation, including locating the defendant and surrendering him or her to the court.” *In re Bond Forfeiture in CR-94019213*, 191 Ariz. 304, ¶ 9, 955 P.2d 541, 543 (App. 1998).

¶14 We agree with Azteca that the procedures in Rule 7.6(c) were not strictly followed, but we disagree that the error requires reversal. The rule unambiguously provides that the court shall issue a warrant and set a hearing if it appears the defendant has violated a condition of an appearance bond. Here, instead of issuing a “bench warrant,” the superior court relied on the grand jury warrant issued on October 20. But, as the court pointed out, although the warrant was called a “grand jury warrant,” it

nonetheless was a warrant issued by the court.³ We agree and are aware of no authority requiring the court to quash the “grand jury warrant” only to issue a “bench warrant.” *Cf. Link v. Wabash R.R. Co.*, 370 U.S. 626, 630-31 (1962) (courts can “manage their own affairs so as to achieve the orderly and expeditious disposition of cases”).

¶15 Azteca nevertheless contends it did not receive notice of the warrant issued on October 20, until the state filed its application for bond forfeiture on November 15—well outside the ten-day requirement of Rule 7.6(c). Although the superior court’s lack of strict compliance with Rule 7.6(c) constitutes error, we have repeatedly explained that such error does not necessitate reversal unless the surety actually suffers prejudice. *In re Bond of \$75,000*, 225 Ariz. 401, ¶ 16, 238 P.3d 1275, 1281 (App. 2010); *In re Bond Forfeiture in CR-94019213*, 191 Ariz. 304, ¶ 10, 955 P.2d at 544. Azteca acknowledges its burden of showing prejudice from a failure of strict compliance with the rule, but argues this case is different because there was “full-blown non-compliance,” rather than a mere lack of strict compliance. But its distinction is premised on the court’s reliance on a grand jury warrant, rather than a bench warrant. And, as we noted above, the court’s reliance on the grand jury warrant was proper, and the court held a forfeiture hearing within 120 days of its issuance. The parties were timely notified of the hearing, and Azteca appeared at the hearing to contest the forfeiture.

³On appeal, Azteca questions “[w]hy the grand jury issued a warrant when it had the authority to issue a summons,” but it does not dispute the validity of the warrant. And, because Azteca has not provided us a transcript of the grand jury proceeding, we presume the transcript supports the court’s findings and conclusions. *See Blair v. Burgener*, 226 Ariz. 213, ¶ 9, 245 P.3d 898, 902 (App. 2010).

¶16 Moreover, Azteca failed either below or on appeal to present any evidence it was prejudiced by the untimely notice. At the forfeiture hearing, Azteca argued it was prejudiced because its employees had been in contact with Pereida on October 19 and, had they received prompt notice of her failure to appear that day, “[they] would have found [her] and marched her in to court.” But “this result is not inevitable and, thus, cannot be presumed.” *See In re Bond Forfeiture in CR-94019213*, 191 Ariz. 304, ¶ 9, 955 P.2d at 543. And, even assuming Azteca had been able to produce Pereida, the superior court nonetheless had discretion to forfeit the entire amount of the appearance bond because she had failed to appear at the ERC hearing on October 19. *See Old W. Bonding Co.*, 203 Ariz. 468, ¶ 28, 56 P.3d at 49; *see also* Ariz. R. Crim. P. 7.6(c)(2), (d). Thus, we cannot say Azteca established prejudice as a result of the court’s lack of strict compliance with Rule 7.6(c).

Sufficient Evidence

¶17 Azteca next argues there was insufficient evidence to support the superior court’s judgment. It asserts the state must present “some quantum of evidence a defendant violated a release condition other than the prosecutor’s unsupported allegation.” And here, Azteca claims, there is no evidence in the record that Pereida violated a condition of her release. We disagree.

¶18 Pursuant to Rule 7.6(c)(1), “[i]f at any time it appears to the court that the [defendant] has violated a condition of an appearance bond,” the court shall issue a warrant and set a bond forfeiture hearing. Here, the state filed a verified application alleging Pereida had “failed to appear for a hearing as directed by the Court in violation

of the conditions of [her] release.” This is all that was required for a warrant to be issued and the court to hold a bond forfeiture hearing. *See* A.R.S. § 13-3968(A) (after prosecutor files verified application “alleging” violation, court may issue warrant and hold hearing). Under the plain language of Rule 7.6(c), the state has no burden of proving that a violation actually occurred before the court may issue a warrant and set a hearing. We will not read such a requirement into the rule. *See, e.g., City of Tempe v. Fleming*, 168 Ariz. 454, 457, 815 P.2d 1, 4 (App. 1991).

¶19 Moreover, at the forfeiture hearing, “the burden is on the [s]urety to show by a preponderance of the evidence an excuse or explanation for [the defendant’s] failure to appear.” *State v. Bail Bonds USA*, 223 Ariz. 394, ¶ 11, 224 P.3d 210, 213 (App. 2010); *see also* Ariz. R. Crim. P. 7.6(c)(2). Here, Azteca never suggested Pereida was in fact present at the ERC hearing and never offered any explanation or excuse for her failure to appear. Instead, Azteca argued that the ERC hearing was not the type of hearing that Pereida was required to attend under her release conditions.⁴ Also, the record indicates the judge presiding over the forfeiture proceedings also presided over the ERC hearing on October 19; thus, he had personal knowledge that Pereida had failed to

⁴Azteca suggests there was no court order directing Pereida to attend the ERC hearing on October 19. However, the justice court explicitly ordered Pereida to attend the ERC hearing on October 12, and when it was rescheduled, Pereida signed a document affirming that she was “required by law to be present” at the ERC hearing on October 19.

attend the ERC hearing.⁵ There was sufficient evidence to support the court's judgment forfeiting the bond.

Disposition

¶20 For the reasons set forth above, the superior court's judgment is affirmed.

/s/ Garye L. Vásquez
GARYE L. VÁSQUEZ, Presiding Judge

CONCURRING:

/s/ Virginia C. Kelly
VIRGINIA C. KELLY, Judge

/s/ Philip G. Espinosa
PHILIP G. ESPINOSA, Judge

⁵All relevant court documents indicate the proceedings were held in Division Five of the superior court.